IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 724 of 1997

For Approval and Signature:

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAYALBHAI CHHAGANBHAI KUMBHARANA - Appellant(s)
Versus
SOMCHANDBHAI LALJIBHAI SHAH & 3 - Respondent(s)

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Appearance :
MR MJ BUDDHBHATTI for Appellant(s) : 1,
NOTICE SERVED for Respondents : 1 - 3.
MR KT DAVE, ADDL PUBLIC PROSECUTOR for Respondent: 4

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 12/10/2007

ORAL JUDGMENT

1. This Appeal under Section 378 of the Code of Criminal Procedure has been filed by the original complainant against the judgment and

order dated 7.5.1991 rendered by the learned Judicial Magistrate, First Class, Jamnagar, in Criminal Case No.2160 of 1989 whereby, the respondents No. 1, 2 and 3 (original accused) have been acquitted of the charges under Sections 323, 504 read with Section 114 of the Indian Penal Code.

2. The Appeal was admitted on 1.8.1997. With the consent of learned counsel for the parties, the Appeal is taken up for final disposal today.

3. Briefly stated, the facts giving rise to the case of the prosecution are that the appellant herein, Dayalbhai Chaganbhai Kumbharana, filed a private complaint on 24.4.1987 in the Court of learned Chief Judicial Magistrate, Jamnagar, to the effect that he was serving as a Principal in School No.14 being run by the Jamnagar Municipality. On 20.4.1987, when the annual examinations were going on in the said school, he arrived there at 7:30 a.m. to perform his duties and

the accused No.3, who was the Administrative Officer, came there with the members of his staff and stopped the complainant as well as other teachers from taking the examination and started to perform that task himself, aided by the members of his staff. It is further stated in the complaint that at 9:30 a.m., when the examination was over and the answer-sheets were being collected, the respondent No.1 tried to take away the answer-sheets, which was objected to, by the complainant. Upon this, the respondents Nos.2 and 3 caught hold of the complainant, and the respondent No.1 took out his revolver and assaulted the complainant with the butt on his head and also abused and threatened to kill him. It is stated in the complaint that it was only due to the intervention of the other members of the staff that the complainant was saved. Thereafter, the complaint was filed, as above, which was sent for investigation under Section 156(3) of the Code of Criminal Procedure and Process was

issued. After a summary trial, the respondents No.1, 2 and 3 were acquitted, giving rise to the present Appeal.

4. This Court has heard Mr.M.J.Buddhbhatti, learned counsel for the appellant and gone through the Record and Proceedings of the case which have been summoned from the trial Court. Although the respondents No.1, 2 and 3 are served, they are not represented by any learned counsel.

5. Mr.M.J.Buddhbhatti, learned counsel for the appellant has submitted that the judgment of the learned trial Magistrate is erroneous on facts as well as on law, inasmuch as the evidence of the injured complainant, as corroborated by the medical evidence and injury certificate, has not been believed. Moreover, it is submitted that the trial Court has wrongly disbelieved the evidence of the eye-witness - PW, Parshottam Anandbhai, which corroborates the version of the complainant. Mr.Buddhbhatti submits that

since the trial Court has failed to appreciate the evidence according to well-settled principles of criminal jurisprudence, the impugned judgment deserves to be set aside and Appeal allowed.

6. In the light of the submissions made by the learned counsel for the appellant, it is necessary to scrutinise the reasons for acquittal of the respondents No.1, 2 and 3 recorded by the learned trial Magistrate. The trial Court has found that there is no evidence to the effect that the respondent No.1 was in possession of a revolver during the altercation with the complainant and therefore, it cannot be conclusively said that the respondent No.1 inflicted a blow with the butt of a revolver on the head of the complainant. The version of PW Parshottam Anandbhai has not been believed by the trial Court since he is a near relative of the complainant. The trial Court has also found that some inquiry had taken place

against the complainant, during the period when the respondent No.1 was the Chairman of the Nagar Primary Education Committee, regarding tampering with his date of birth in the official record, due to which the complainant was removed from service vide order, which is produced at Ex.27. The trial Court has found that the complainant, therefore, had some animosity against the respondent No.1. Similarly, the respondent No.2 had lodged the complaint against the complainant for this offence as well as for the offence of removing the official record from School No.14, in an unauthorized manner. In the view of the trial Court, PW Parshottam Anandbhai had supported the complainant, throughout, in the above episode and was also an interested witness and, therefore, his testimony could not be believed. On the above grounds, the trial Court has recorded a finding of acquittal in favour of the respondents No.1 to 3.

7. In order to re-appreciate and re-evaluate the reasons recorded by the learned trial Magistrate in the background of the evidence on record, it will be necessary to briefly recapitulate the salient features of the relevant testimony of the prosecution witnesses.

8. The complainant, Dayalbhai Chhaganbhai Kumbharana, has been examined as PW 1 and his testimony is to be found at Ex.17. In his examination-in-chief he states that the incident took place on 20.4.1987, in the premises of Municipal School No.14 at about 9:30 a.m. According to PW 1, he was the Principal of the school at that point of time when the annual examinations of the students were taking place. He states that the respondent No.3 started collecting the answer-sheets which was objected to by him and upon that, the respondent No.1 gave a blow with the revolver butt on the left side of his head and the respondents Nos.2 and 3

started to give kicks and fist blows to the complainant. He further states that PW Parshottam Anandbhai came to his rescue and it was only then that the Police personnel came and took them all to the Police Station, from where this witness was taken to the hospital for treatment.

In his cross-examination, PW 1, Dayalbhai Chaganbhai admits that due to his superannuation he was not in service with effect from 29.11.1986. He has admitted that the incident took place on 20.4.1987, i.e. after his superannuation from service. This witness has categorically admitted that on the day of the incident he was no longer in service but had gone to the premises of School No.14, on the day of the examination. This witness has also categorically admitted that even though he was no longer in service, he had taken away the official record to his house and that the respondent No.3 had filed a complaint against him in this regard. He

has also admitted the fact that he was served with a chargesheet for misconduct and was ordered to be removed from service vide order dated 5.8.1985, which was unsuccessfully challenged by him upto the High Court, and even that the respondent No.3 had appointed another Principal in his place vide order dated 20.11.1986. The relevant documents such as the order of removal of PW 1 from service as well as the complaint filed against him by the respondent No.3 have been produced on record and admitted by this witness.

9. PW 2, Parshottam Anandbhai, has been examined at Ex.36. He is purported to have witnessed the incident. He has stated that on 20.4.1987, the complainant was Principal in School No.14 and this witness was Assistant Teacher in the same school. According to PW 2, on the day of incident the answer-sheets of the annual examinations were distributed by the complainant and the respondent No.3 came there and ordered the students that they

should give the answer-sheets to him, and not to the complainant. It is stated by him that after the examinations were over, the complainant was collecting the answer-sheets from the students which was objected to by the respondent No.3 but he insisted that since he (complainant) was the Principal of the school, he had the right to collect the answer-sheets. This witness has stated that the respondent No.3 called the respondents No.1 and 2 and the respondent No.2 gave a blow with the butt of the revolver on the head of the complainant, while the other two respondents caught hold of him. According to PW 2, on his intervention the respondent No.1 also gave a blow with the butt of the revolver to this witness which hit him above the eye on his forehead.

In cross-examination, PW 2 admits that he is the first cousin of the complainant. He also admits that the respondent No.3 was the Administrative Officer of the school at the

relevant point of time and had the authority to keep the record and property of the school under his control. The tone and tenor of the testimony of this witness gives rise to the impression that he has a definite bias in favour of the complainant and therefore, his testimony does not have the ring of truth about it.

10. PW 3, Dr.Manohar Pesumal Santani has been examined at Ex.39. According to this witness, on 20.4.1987 at about 9:50 a.m., when he was performing his duties as a Casualty Medical Officer of Irvin Hospital, he examined the complainant and found a fresh bleeding injury on his left side forehead which was 1 cm x .25 cm. According to Dr.Manohar, this injury could have been caused by a hard and blunt object such as the butt of a revolver. However, there was no fracture of the bone and the complainant was admitted as an indoor patient for a day and discharged the next day. The history given by the complainant to

Dr.Manohar is that he sustained the injury by the butt of a revolver in an altercation which took place in School No.14. Dr.Manohar further states that on the same day, he examined PW 2 Parshottam Anandbhai who had fresh injuries on the right side of forehead above the eye and left side of the forehead above the eye. According to this witness, these injuries could have been caused by a hard and blunt object. The history given by PW Parshottam Anandbhai to Dr.Manohar is the same as that given by the complainant, i.e. he sustained the injury by a blow from the butt of a revolver in School No.14.

In cross-examination, Dr.Manohar states that the injuries on the complainant and PW Parshottam Anandbhai were simple in nature and both the patients were conscious during the time of treatment and their condition was normal. He has further stated that the injuries of the nature sustained by the

complainant and PW 2 could be sustained by a fall or hit by a stone or stumbling down. Dr.Manohar categorically states that the complainant and PW Parshottam Anandbhai did not disclose the name of the person who allegedly attacked them and inflicted injuries on them.

11. Although the complainant, in his written complaint, has stated that at the time of the incident, several teachers were present in the premises of the School No.14, who witnessed the incident and has, in paragraph 5 of the complaint, also given the names of those persons, none of these persons has been examined except for Parshottam Anandbhai (PW 2). For reasons best known to him, the complainant has failed to examine any independent witnesses even after giving their names but has only examined PW 2, who is a near relative and, as discussed earlier, whose testimony does not seem to be convincing and trustworthy.

12. From the evidence on record as discussed herienabove, it is evident that the complainant was no longer serving as Principal of School No.14 on 20.4.1987 when the incident took place. By his own admission, he had superannuated with effect from 29.11.1986. At the relevant point of time, the respondent No.1 was the Chairman of the Primary Education Committee, the respondent No.2 was the Fire Superintendent and the respondent No.3 was the Administrative Officer. The incident took place on a day when the annual examinations of the school were being conducted. The respondents No.1 to 3 were holding responsible positions at the relevant point of time and it is obvious that they had the authority to be present at the premises where the examination was being conducted. It is equally evident that the complainant, who was no longer serving as a Principal on 20.4.1987, had no business to interfere in the process of the examinations and

collection of the answer-sheets. The evidence reveals that the complainant was nursing a previous enmity against the respondents Nos.1 to 3, since they had lodged complaints against him. Moreover, it has not been proved that the respondent No.1 was in possession of a revolver or that the injury on the head of the complainant was inflicted by a blow with the butt of the said revolver. As noticed by the trial Court, the evidence of PW 2 is full of numerous improvements and embellishments, contradictory to the narration in the complaint. The evidence of the complainant and PW Parshottam Anandbhai is also mutually contradictory in many respects. A scrutiny of the entire evidence on record does not lead to the conclusion that the incident took place as narrated by the complainant. The guilt of respondents No.1 to 3 is, therefore, not proved beyond a shadow of doubt.

13. It is to be kept in mind that the present is

an Appeal against acquittal and unless the judgment of the trial Court is perverse, contrary to the evidence on record, or legally unsustainable, the appellate Court would be slow to interfere or upset the findings arrived at by the lower Court. In the light of the evidence discussed hereinabove, this Court finds that there is no legal infirmity in the judgment of the trial Court to warrant interference. The finding of acquittal has rightly been recorded in favour of the respondents after taking into consideration the relevant evidence and probabilities of the case.

14. In the ultimate analysis, there is no merit in the Appeal, which stands dismissed.

(Smt.Abhilasha Kumari, J.)

(sunil)